

**East Hampton Planning and Zoning Commission
Regular Meeting
March 7, 2012
Town Hall Meeting Room**

Unapproved Minutes

1. **Call to Order and Seating of Alternates:** Chairman Philhower called the meeting to order at 7:00 p.m.

Present: Chairman Mark Philhower, Vice-Chairman Ray Zatorski (7:01), Members Peter Aarrestad, Roy Gauthier, Richard Gosselin, Rowland Rux, James Sennett, Alternate Members Darin Hurne, Kevin Kuhr, Meg Wright and Planning, Zoning & Building Administrator James Carey were present.

Alternate Member Darin Hurne was seated at this time.

2. **Approval of Minutes:**
A. **February 1, 2012 Regular Meeting:**

The Chairman unseated Mr. Hurne and seated Mr. Zatorski at this time.

Mr. Aarrestad moved, and Mr. Rux seconded, to approve the Minutes of the February 1, 2012 meeting as written. The motion carried unanimously.

3. **Communications, Liaison Reports, and Public Comments:**

Communications:

Mr. Carey reported that the Connecticut Federation of Planning and Zoning Agencies 64th Annual Conference will be held Thursday, March 15, 2012 at the Aqua Turf Country Club in Plantsville.

The report of John Pagini, AICP, to John Weichsel regarding 68 Spellman Point Road and the land use permitting process has been included in this evening's packages.

The updated PZC Liaison list, Member Contact list, and Term Information are also in the packages this evening.

Chairman Philhower announced that Mr. Sennett will be honored with the Lifetime Achievement Award by Connecticut Federation of Planning & Zoning Agencies. Chairman Philhower read the notification from the Federation into the record and thanked Mr. Sennett for his many years of service.

Liaison Reports:

Mr. Gauthier reported he was unable to attend February's EDC meeting and asked Mr. Carey to make the report. Mr. Carey reported that the EDC Breakfast will be Thursday, March 15, 2012. They also discussed the potential for 13 Summit Street and concern for water availability, and the renovation of the directory sign at the intersection of Route 66 and Main Street.

Mr. Sennett reported on the ZBA meeting held on February 13th. Two variance applications were heard. The first was for 15 Pine Brook Road to reduce the sideyard setback from 25' to 15' to construct a two-car garage. This variance was granted. The second variance request for 45 O'Neill Lane to reduce the rear-yard setback from 25' to 16' and the side-yard setback

from 15' to 7' to reconstruct an existing 1920 cottage was denied. The minutes of this meeting are available on line and are on file in the Town Clerk's Office.

Mr. Aarrestad reported that the Salmon River Watershed Partnership has been inactive.

Mr. Zatorski asked Mr. Carey to report on the IWWA. Mr. Carey reported that the members of the IWWA have received copies of the report on 68 Spellman and will review it and discuss it further. The only other issue of relevance to the PZC will be discussed during the agenda item later in this meeting. The minutes of this meeting are available on line and are on file in the Town Clerk's Office.

Mr. Rux reported that the Water Development Task Force has been inactive.

Mr. Philhower reported on the past two meetings of the Midstate Regional Planning Agency which have taken place since the last PZC meeting. In the first meeting the Agency reviewed three applicants for one \$1,000,000 grant. The applicants were East Haddam who applied to do a sidewalk/lighting improvement, Middletown who applied to do a downtown connector path from Wesleyan Hills through Wesleyan University along the side of Washington Street to Main Street, and Portland who applied to complete the Airline Trail through to Cobalt. The vote went down in a heavily attended meeting 9-7 for the Middletown project. East Hampton could have leant its support to Portland benefiting East Hampton as well; however the two other East Hampton seats on the Agency went unattended. There was also a subdivision review for Killingly which was deemed to have no regional significance. On the 6th of March the meeting heard two Transportation Improvement Projects. One was for pavement preservation and the other was for traffic signals in various locations. Both projects were unanimously approved. They also reviewed four subdivisions also deemed to have no regional significance. The Agency received a report from the Lower Connecticut River Valley Council of Governments which was provided to the Planning and Zoning Administrator. The report discusses the proposed consolidation of the Connecticut River Estuary Regional Planning Agency and Midstate Regional Planning Agency. Several towns have already voted and unanimously approved the merger. East Hampton has again not represented their interests on this issue. Mr. Philhower explained that this merger will go through. East Hampton can choose to be a member or not. If they choose to be a member, they will be responsible for dues and will be eligible for federal traffic money. If they choose not to be a member and don't pay dues they will not be eligible for any federal traffic money. East Hampton does not have full representation at the present time.

Mr. Kuhr reported that he attended the meeting of the Conservation-Lake Commission on February 9th. Chuck Lee from DEEP was present to discuss various grants available. He also discussed various reports that have been compiled regarding Lake Pocotopaug. The Commission also discussed various projects including the Christopher Brook culvert, 18 Wells Avenue, and 25 Meeks Point Road. There was an Education Subcommittee report which covered historical signage along the Airline Trail and watershed signage. Loos Pond was also discussed, as was potential funding from Midstate for water quality and conservation improvements. This year's lake cleanup will be held on April 21st. The Commission is also considering the creation of a lake mascot. The minutes of this meeting are available on line and are on file in the Town Clerk's Office.

Public Comments: The Chairman opened the meeting to the public for comments. There were none.

The Chairman indicated that he would like to discuss the pending reappointments to the Commission.

Mr. Zatorski moved, and Mr. Aarrestad seconded, to add Item No. 7.B, Pending P&Z Reappointments Discussion and Communication to Town Council, to the Agenda under New Business. The motion carried unanimously.

4. Set Public Hearing:

- A. Application of LCS Properties LLC, 130 East High Street, for a Zone Change from DD to MUDD and Lake Pocotopaug Protection Area – Map 10A/Block 85/Lots 5, 5A, 5B & 5C;**
- B. Application of West High Enterprises LLC, 195 West High Street, for a 2-Lot Commercial Subdivision and Special Permits Section 7.6.2.Q, Self-Storage, & 7.6.1.A, Retail – Map 12/Block 36/Lot 3:**

Mr. Zatorski moved that the Planning & Zoning Commission Schedule the public hearing for application of LCS Properties LLC, 130 East High Street, for a Zone Change from DD to MUDD and Lake Pocotopaug Protection Area, Map 10A/Block 85/Lots 5, 5A, 5B & 5C, for the May 2, 2012 regular meeting and the public hearing for application of West High Enterprises LLC, 195 West High Street, for a 2-Lot Commercial Subdivision and Special Permits Section 7.6.2.Q, Self-Storage, & 7.6.1.A, Retail, Map 12/Block 36/Lot 3, for the April 4, 2012 regular meeting. Mr. Rux seconded the motion. The motion carried unanimously.

5. Read Legal Notice: Mr. Carey read the legal notice for tonight's public hearings into the record.

6. Public Hearing for March 7, 2012:

- A. Application of Donald A. DeVivo, 18 Wells Avenue, for a 2-lot Residential Subdivision and a Lake Pocotopaug Protection Area Special Permit – Map 05A/Block 63A/Lot 1:**

Mr. Carey reported there is concern noted by an abutter to this subject parcel that proper legal notice was not made to the abutting neighbors. This could be a serious flaw in the application and will need to be researched by staff.

Bart Bovee of MBA Engineering was present to represent the applicant. He reported that the proposed application is for a two-lot subdivision and Lake Pocotopaug Protection Area review. Presently the property consists of one house that has been divided into two rental units and three "bunkies" that lie closer to the lake. The property does have inland wetlands and has been granted a permit by the IWWA. The first lot has frontage on Wells Avenue and direct access to Lake Pocotopaug. The second lot will be a rear lot created to the south of the first lot. The proposal is for a common driveway with an easement in a location to protect the large trees located on Wells Avenue. The rear lot does not have direct access to the lake. The project will include a mutual use easement area that will allow access to the lake for the rear lot through the first lot. This easement would be created to protect the wetlands and eliminate the need for secondary access across the wetlands.

The property is in the R-1 Zone. The first lot is a little over one acre in size. The rear lot is 1.37 acres. Both meet the requirements of the zone. The lot is already served by sanitary sewer and wells. The permit granted by the IWWA allows for replacement of a footbridge

over the wetlands, which keeps people from walking through the wetlands. The IWWA conditioned their approval by extending the footbridge farther than that which is currently present to provide the wetlands with additional protection. Every opportunity has been taken to protect the lake. Rain gardens have been provided in various locations on the site to contain runoff from the houses and driveway. This will eliminate and protect the Lake from contamination.

Each lot will preserve one "bunkie". The kitchens will be removed from each of the two "bunkies". They will not be considered secondary residences on the property. The owner will file a covenant on the land records to stipulate that the "bunkies" will never be used as rentals and the kitchens will be removed. They will essentially be used as bunkhouses for guests with no kitchens.

The plan addresses a long standing drainage concern that is present at the end of Wells Avenue. At the end of this road there is no drainage. There is a lot of erosion that flows through the road. There is extreme evidence of erosion and scouring present. Much of the salt, sands, and contaminants wash through into the wetlands. The project proposes a catch basin at the end of the paved road, to be maintained by the owner of the property, connected with pipe to a plunge pool directing flow into a rain garden. This will be a good protection measure for the Lake with a trap structure and bio-filter in the rain garden. The project also moves the driveways and parking to the side of the parcel opposite the Lake further protecting the Lake from existing potential for contamination.

The Chatham Health District has reviewed the applicant and made minor requests to the applicant. These will be addressed. There will be two wells for the new parcels. The existing wells will be abandoned. The applicant has received a very positive referral from the Conservation-Lake Commission. The WPCA has requested and received, as indicated in the most recent set of plans, revised lateral connections. The rear lot will be connected to the sewer by a lateral through the front lot avoiding the wetlands entirely.

The existing lot is 43% wooded. Most of the wooded area is in the vicinity of proposed Lot 1B. A significant area of the lot will be protected by a conservation easement. The easement will be recorded in the land records and will protect the trees. The area will remain in its wooded state. The conservation area will incorporate about .61ths of an acre of the property. The applicant is open to using the means of conservation as preferred by the Town, either a conservation covenant or easement as the Town so chooses.

Mr. Carey discussed the Strong property abutting the subject property which enjoys a driveway access that is on the subject property. The applicant has agreed to allow for continued access for Mr. Strong and his heirs, assigns, and successors. Mr. Carey would prefer an easement be placed in favor of the Strong property. Mr. Carey pointed out that the applicant means to obtain a permit from the Chatham Health District to ensure that the project is in compliance with the health code. Mr. Carey also reported that this subdivision application does not meet the threshold to require that Commission consider an open space requirement. The previous lots were created prior to 1949 and this piece will constitute the third piece created by subdivision.

The house on the front lot will have 3600 sq ft. The house on the rear lot will have 2400 sq ft. The two existing cottages have footprints in the range of 300 to 400 ft. The "bunkies" will have half baths. These baths will not include showers or tubs. There are outside

showers. They were previously summer rentals. They will no longer be rentals but overnight accommodations for house guests of the owners.

Mr. Bovee discussed the drainage calculations with the Commission. The applicant has provided information for the 25-year storm on the major storm culvert and a two-year storm for the bio-filters and infiltration. The major goal of the bio-filter from the standpoint of runoff is to insure storage and first flush for water coming off the site. The 25-year analysis found that the flow coming from the proposed storm drainage was 2.9 cubic feet per second (cfs). The existing runoff on the site is about 3 cfs.

The driveways will be gravel. The only areas that will be paved will be the apron area and approximately 10' pads off the garages.

Mr. Carey read a letter from Vincent Susco of the WPCA into the record. Mr. Susco indicated that the applicant has adequately addressed his concerns regarding this project and the WPCA is prepared to move forward with this project pending P&Z approval. He also read a letter from the Conservation-Lake Commission dated February 24, 2012 indicating their review of the application revealed that many of the concerns of the C-L Commission regarding development near the Lake have been addressed by the applicant and includes many features the C-L Commission desires in development near the lakefront including rain gardens, conservation areas, and minimal cutting of trees and shrubs on the property. Mr. Carey confirmed that the IWWA issued the applicant a permit with conditions on March 6, 2012. The IWWA did not declare this a significant activity and did not hold a public hearing on this application.

Mr. Carey also read a letter into the record from Peter Loening who owns 9 Mallard Cove discussing his concerns regarding proper written notification of this public hearing and application, as well as concerns regarding the requirements for a subdivision of this property.

Mr. Carey read a letter from Thad King of the Chatham Health District into the record. The subject plan has been reviewed and the Chatham Health District does have concerns that must be addressed and the applicant must apply and obtain the appropriate approvals from the Chatham Health District prior to this application obtaining a P&Z approval.

The Chairman indicated that he would like to leave the public hearing on this application open until such time as the staff can confirm proper written notification of abutters and the appropriate Chatham Health District approvals.

The Commission requested that the applicant provide a maintenance schedule on the large catch basin at the end of Wells Avenue.

Mr. Zatorski moved, and Mr. Sennett seconded, to continue the public hearing of Donald A. DeVivo, 18 Wells Avenue, for a 2-lot Residential Subdivision and a Lake Pocotopaug Protection Area Special Permit, Map 05A/Block 63A/Lot 1. The motion carried unanimously.

Mr. Zatorski moved, and Mr. Rux seconded, to continue the application of Donald A. DeVivo, 18 Wells Avenue, for a 2-lot Residential Subdivision and a Lake Pocotopaug Protection Area Special Permit, Map 05A/Block 63A/Lot 1. The motion carried unanimously.

7. New Business:

- A. Midstate Regional Planning – Appointment:** Mr. Philhower indicated his willingness to continue as the Planning & Zoning Commission’s representative to the Midstate Regional Planning Agency.

Mr. Zatorski moved, and Mr. Aarrestad seconded, to reappoint Mark Philhower to represent the East Hampton Planning & Zoning Agency on the Midstate Regional Planning Agency for the next two-year term. The motion carried unanimously.

Note: Agenda Item 7.B, Discussion Regarding Pending P&Z Reappointments was added to the Agenda under Communications by motion and unanimous vote.

- B. Discussion Regarding Pending P&Z Reappointments:** The Chairman discussed his concern that the terms of one regular member and three alternate members expired in December 2011. The Town Council has the right to hold over the expired members for 90 days to allow the Council time to fill the expired seats. The 90-day period will lapse prior to the next regular P&Z meeting. The Chairman believes all four members up for reappointment have been very committed and dedicated to the needs and requirements of the Town and the Commission. The Commission would like staff to draft a letter to the Town Council including the points that all the members up for reappointment regularly attend and participate in meetings and site walks, all educational activities for both P&Z and town volunteers, one alternate is a Liaison to the Conservation-Lake Commission, the regular member is a Liaison to the ZBA and the senior member of the Commission with approximately 30-years experience and knowledge of both the Town and the Commission, and the attendance records for this Commission is exceptional. The Commission would also like to stress the urgency that they have a full Commission for their next meeting in April. The Chairman requested that this letter be written and sent to the Town Manager requesting that it be delivered to the Town Council under the Town Manager’s Report Agenda Item at the Tuesday, March 13, 2012 Council meeting as well as distributed to the individual members of the Town Council.

Mr. Zatorski moved, and Mr. Gauthier seconded, that the P&Z Commission send a letter to Town Council requesting that the senior regular member, James Sennett, and the three alternate members, Darin Hurne, Kevin Kuhr, Meg Wright, be reappointed to the P&Z Commission for the reasons previously stated. The motion carried unanimously.

8. Old Business:

- A. Regulations - Discussion of Recent Corrections:**

Mr. Carey explained that the report of John D. Pagini, AICP, Land Use Planner regarding the Permit Compliance Analysis for 68 Spellman Point Road and Recommendations for the Town of East Hampton future land use applications dated February 23, 2012 has been completed and copies have been provided to the Commissioners. The report refers to confusion in the East Hampton Planning and Zoning Regulations, Section 7 – Permitted Land Uses. In 2003 the IWWA adopted a wetland review area of 100’. At which time jurisdiction over activity in that review area was transferred to the IWWA and the P&Z was relieved of the responsibility to issue special permits for activity in the wetbelt. On March 5, 2003 the PZC voted to remove Section 7.11, Wetbelt, from the P&Z Regulations and recognize the jurisdiction of the IWWA. On August 6, 2003, and December 3, 2003 the PZC voted to remove the special permit requirement from the R-1, 2, 3, 4, C, I, and POR Zones of the P&Z Regulations. Since that time the Regulation has included in the Special Permit Uses for each individual zone (excluding RL, VC [created in 2011], HOD [created

in 2008], and MUD [created in 2011] language that read, “All uses or development within one hundred feet (100’) of wetlands or watercourses in accordance with the Inland Wetlands and Watercourses Regulations (revised – effective [date varied between August 9, 2003 or December 6, 2003]).” This language is where the confusion lies.

Mr. Carey indicated that since 2003 no applicant has been advised to apply to the PZC for a wetbelt special permit. After careful review of the minutes, motions by the PZC, publication dates of the legal notices, and meeting with the Town’s land use attorney, the Regulation has been corrected and all references to “All uses or development within one hundred feet (100’) of wetlands or watercourses in accordance with the Inland Wetlands and Watercourses Regulations (revised – effective [date varied between August 9, 2003 or December 6, 2003]).” have been removed from the Regulations.

The Town’s land use attorney has reviewed the minutes, motions, and legal notices and advised Mr. Carey that to remedy the confusing language in the Regulations would not require any additional activity by the Commission because it had already been appropriately removed from the Regulations by the Commission. The text of the Regulation shall simply be changed to affect the intention of the Commission as was clearly documented by the minutes, motions, and legal notices in 2003.

The timeline for the text changes to the East Hampton Planning and Zoning Regulations as documented by the Planning, Zoning & Building Department and reported by John D. Pagini, AICP, Land Use Planner, to John Weichsel, Interim Town Manager, on February 23, 2012 is as follows:

- 03/05/2003 P&Z Regular Meeting, Agenda Item No. 7.A, Public Hearing for Regulation Revision-Section 7.11 (wetbelt): After deliberation and public comments motion was made by Peter Aarrestad and seconded by James Sennett, “that the East Hampton Planning and Zoning Commission approves the deletions of Section 7.11 (wetbelt) from the Zoning Regulations and renames it ‘For Reserved Future Use’. For the following reasons: The Inland Wetlands Commission has revised their regulations to address the wetbelt area, to protect and preserve wetlands more comprehensively than with the two commissions reviewing it. It’s a good idea and will stream line the process and allow the IWWA to do their job real well.” The vote was unanimous in favor of the motion.
- 03/08/2003 Action Legal published in the Middletown Press.
- 08/06/2003 P&Z Regular Meeting, Agenda Item No. 7.B, Public Hearing for Proposed Subdivision and Zoning Regulations Changes: After deliberation and public comments regarding various suggested revisions, omissions, and changes including “Delete the following 7.1.3A, 7.2.3A, 7.3.3A, 7.6.2A, 7.7.2A, 7.8.3A, 7.9.1A,” Richard Edwards made a motion, seconded by William McDonald, “that the East Hampton Planning and Zoning Commission approve changes made to the Subdivision and Planning and Zoning Regulations.” The vote was unanimous in favor of the motion.
- 08/09/2003 Action Legal published in the Middletown Press.
- 12/03/2003 P&Z Regular Meeting, Agenda Item No. 6.F, Public Hearing for Proposed Regulations Changes to the East Hampton Zoning Regulations, the East Hampton Subdivision Regulations: After deliberation and stating “The Commission agreed with the proposed changes/amendments for Definitions-

Wetlands, Section 6.1, Section 7.1.3A, 7.2.3A, 7.3.3A, 7.4.3A, 7.6.2A, 7.7.2A, 7.8.3A, 7.9.1A” and hearing public comments and further deliberation, Raymond Zatorski moved, and James Sennett seconded, that the Planning and Zoning Commission pass all proposed changes/amendments with the exception of the Bulk Table, the Salmon River Protection Area, and the Conservation Subdivision and include those items in the East Hampton Planning and Zoning Regulations and Subdivision Regulations so amended this evening and to be effective as of December 8, 2003. The vote was unanimous in favor of the motion.

- 12/06/2003 Action Legal published in the Middletown Press.
- 02/28/2012 Meeting with Town Land Use Attorney, Jean D’Aquila. Planning, Zoning & Building Administrator instructed to remove confusing language from the Planning & Zoning Regulations as initiated and intended by the Planning & Zoning Commission in 2003.
- 02/29/2012 Planning, Zoning & Building Department staff removed the confusing language from the Planning & Zoning Regulations as instructed by the Town Attorney.

The Commission would like it to be on the record that five of the currently seated members on this Commission were active members of the Planning and Zoning Commission in 2003. Messrs. Aarrestad, Philhower, Rux, Sennett, and Zatorski were all active members on this Commission at the time of the 2003 text amendments.

9. **Adjournment:** *Mr. Zatorski moved to adjourn the meeting. Mr. Rux seconded the motion. The motion carried unanimously.*

The meeting adjourned at 8:28 p.m.

Respectfully submitted,

Daphne C. Schaub
Recording Secretary